

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE  
APPLICATION OF:

|                 |                          |
|-----------------|--------------------------|
| GREGORY MARTIN, | FINAL DECISION AND ORDER |
| RESPONDENT      | LS0204111RSG             |

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The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 21<sup>st</sup> day of May, 2002.

Oscar Herrera, Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

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IN THE MATTER OF  
THE APPLICATION OF

|                   |                   |
|-------------------|-------------------|
| GREGORY J. MARTIN | PROPOSED DECISION |
| Applicant         | LS0204111RSG      |

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The parties to this proceeding, for the purposes of sec. 227.53, Stats., are:

Gregory J. Martin  
408 Mount Washington Avenue, #306  
Eau Claire, WI 54703

Department of Regulation & Licensing

Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

A Class I hearing was conducted in the above-captioned matter on April 30, 2002, at 1400 East Washington Avenue, Madison, Wisconsin. Applicant Gregory J. Martin appeared without legal counsel. The Division of Enforcement appeared by Attorney Claudia Berry Miran.

Based upon the entire record in this case, the administrative law judge recommends that the Department of Regulation & Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

#### FINDINGS OF FACT

1. Gregory J. Martin, applicant herein (Mr. Martin) filed his application for a private security permit by application dated November 28, 2001. Mr. Martin provided information with his application establishing that on December 13, 1999, he was convicted on his plea of no contest in the Circuit Court for Dunn County of Disorderly conduct, in violation of sec. 947.01, Stats.
2. Mr. Martin was placed on probation for one year, and was ordered as a condition of probation to complete sexual offender classes. He cooperated with the terms of his probation, completed the sexual offender classes, and was released from probation on December 13, 2000.
3. The transactions leading to the convictions involved conduct occurring while Mr. Martin was an employee of Aurora Community Services at a group home in Menomonie, Wisconsin. The criminal complaint states that Mr. Martin pulled down his pants in front of a resident at the home displaying his erect penis, asked the resident to take down her pants, and asked if she wanted to "touch it." The resident declined to do so and reported the incident to the administration of the facility.
4. Because persons holding private security permits may have dealings with the public while in a position of some apparent authority, the circumstances of Mr. Martin's conviction for disorderly conduct are substantially related to the circumstances of the practice of a private security permit holder.
5. In the period following his conviction, Mr. Martin has completed business courses at Chippewa Valley Technical College while being employed in a clerical position on a full time basis.

#### CONCLUSIONS OF LAW

1. The Department of Regulation & Licensing has jurisdiction in this matter pursuant to secs. 440.26(5m) and (6), Stats.
2. The circumstances of Mr. Martin's conviction for disorderly conduct are substantially related to the circumstances of the practice of a private security permit holder, within the meaning of sec. 111.335(1)(b), Stats.
3. Mr. Martin's actions and conduct since the time of the conviction establish that he may safely practice as a private security person with appropriate limitations.

#### ORDER

NOW, THEREFORE, IT IS ORDERED that Gregory J. Martin be, and hereby is, granted a limited permit to practice as a private security person in Wisconsin imposing the following terms and conditions:

- The term of the limitations shall be not less than two years.

- For the term of the limitation, Mr. Martin shall not practice in a position where he has direct contact with the public.
- During the period of limitation, Mr. Martin shall be responsible for submission to the department of quarterly written work reports prepared by his employer setting forth Mr. Martin's activities and progress in his employment.
- After two years of continuous active practice under this Order, Mr. Martin may petition the department for a termination of all limitations on the permit, and the grant of an unlimited permit. Grant of the petition shall be in the sole discretion of the department, and denial of the petition in whole or in part shall not be considered a denial of a permit within the meaning of §227.01(3)(a), Stats., and Mr. Martin shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for termination of the limitations and grant of an unlimited permit.
- Violation of any of the terms of the department's Order, or any illegal conduct of a nature similar to that leading to his conviction, shall be construed as conduct imperiling public health, safety and welfare and may result in summary suspension of Mr. Martin's permit. The department in its discretion may in the alternative deny a renewal of the permit or impose additional conditions and limitations for violation of any of the terms and conditions.

### OPINION

The threshold question in this case is a determination whether the circumstances of Mr. Martin's convictions are substantially related to the circumstances of the practice of a private security person. In *County of Milwaukee v. LIRC*, 139 Wis.2d 805, 407 N.W.2d 908 (1987), the court set forth the test to be utilized in making that determination:

We reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details related to such things as the hour of the day the offense was committed, the clothes worn during the crime, whether a knife or a gun was used, whether there was one victim or a dozen or whether the robber wanted money to buy drugs or to raise bail money for a friend. All of these could fit a broad interpretation of "circumstances." However, they are entirely irrelevant to the proper "circumstances" inquiry required under the statute. It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

The full assessment of what may be termed the "fostering" circumstances may, at times, require some factual exposition. For instance, in "disorderly conduct" cases the type of offensive circumstances is not as explicit as it is in sexual assault, armed robbery, theft or embezzlement convictions for example. However, such factual inquiry would have as its purpose ascertaining relevant, general, character-related circumstances of the offense or job. *139 Wis.2d 805 at 823*.

A character trait indicative of a tendency to engage in sexual assault is without question substantially related to employment involving contact with the public in an employment position which may evince some degree of power and authority. Were it concluded that the character traits and character related circumstances demonstrated at the time of Mr. Martin's illegal activity are indicative of the nature of his character today, there would be more than adequate basis for affirming the department's earlier decision. Mr. Martin's demeanor and testimony at hearing, however, demonstrated an apparently sincere effort at rehabilitation and reformation.

In the Supreme Court case cited above, the court extensively discusses the policy objectives of the prohibition against discrimination in employment and licensure, and the exceptions thereto for substantially related convictions. That discussion includes the following:

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

It is highly desirable to reintegrate convicted criminals into the work force, not only so they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them. This is a worthy goal and one that society has shown a willingness to assume, as evidenced by the large sums of money expended in various rehabilitative programs. However, the legislature has clearly chosen to not force such attempts at rehabilitation in employment settings

where experience has demonstrated the likelihood of repetitive criminal behavior. *139 Wis.2d 805 at 822.*

Based upon these principles, it would probably be unwise at this time to grant Mr. Martin an unlimited permit. It seems appropriate, however, to grant him a permit with limitations designed to ensure that there is little or no opportunity to repeat his unacceptable behavior in the context of his employment. The requirement that he have no direct contact with the public for the period of the limitation should serve that purpose, and the requirement that he provide quarterly work reports from his employer should permit the department to satisfy itself that Mr. Martin is not conducting himself in his employment in a manner contrary to the public's best interests.

It also seems appropriate that after two years of employment as a private security person without further incident, Mr. Martin should be permitted to petition for termination of the limitations. Should there be any residual concern at the end of that time as to Mr. Martin's rehabilitative status, the department may continue the limitations without affording Mr. Martin another hearing. Moreover, if Mr. Martin is found to have engaged in further misconduct of a nature similar to that for which he was convicted, the suggested order would permit the department to take immediate action to remedy the situation. With these safeguards in place, it is suggested that the state's policy guidelines for employment of convicted persons will have been adhered to.

Dated this 1<sup>st</sup> day of May, 2002.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge